

Before the
Communications Commission
Washington, DC

In the Matter of:

Closed Captioning of Internet Protocol-Delivered Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010

MB Docket No. 11-154

CG Docket No. 05-231

**Closed Captioning of
Video Programming;
Telecommunications for the Deaf,
Inc. Petition for Rulemaking**

Report on the State of Closed Captioning of Internet Protocol-Delivered Video Programming

Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI)

National Association of the Deaf (NAD)

Association of Late-Deafened Adults (ALDA)

Hearing Loss Association of America (HLAA)

Cerebral Palsy and Deaf Organization (CPADO)

Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN)

California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH)

Technology Access Program at Gallaudet University (TAP)

Blake E. Reid

Counsel to TDI

Margarita A. Varona

Diana Cohn

Student Clinicians

Institute for Public Representation

Georgetown Law

600 New Jersey Ave. NW

Washington, DC 20001

202.662.9545

blake.reid@law.georgetown.edu

via electronic filing

May 16, 2013

Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI)

Claude Stout, Executive Director • cstout@TDIforAccess.org

Contact: Jim House, Director of Public Relations • jhouse@TDIforAccess.org

8630 Fenton Street, Suite 121, Silver Spring, MD 20910

www.TDIforAccess.org

National Association of the Deaf (NAD)

Howard Rosenblum, Chief Executive Officer • howard.rosenblum@nad.org

Contact: Andrew Phillips, Policy Counsel • andrew.phillips@nad.org

8630 Fenton Street, Suite 820, Silver Spring, MD 20910

301.587.1788

www.nad.org

Hearing Loss Association of America (HLAA)

Brenda Battat, Executive Director • Battat@Hearingloss.org

Contact: Lise Hamlin, Director of Public Policy, LHamlin@Hearingloss.org

7910 Woodmont Avenue, Suite 1200, Bethesda, MD 20814

301.657.2248

www.hearingloss.org

Association of Late-Deafened Adults (ALDA)

Mary Lou Mistretta, President • aldamarylou@yahoo.com

Contact: Brenda Estes • bestes@endependence.org

8038 Macintosh Lane, Suite 2, Rockford, IL 61107

www.alda.org

Cerebral Palsy and Deaf Organization (CPADO)

Contact: Mark Hill, President • deafhill@gmail.com

1219 NE 6th Street #219, Gresham, OR 97030

503.468.1219

www.cpado.org

Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN)

Cheryl Heppner, Vice Chair • CHEppner@nvrc.org

3951 Pender Drive, Suite 130, Fairfax, VA 22030

California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH)

Contact: Sheri A. Farinha, Vice Chair • SFarinha@norcalcenter.org

4708 Roseville Rd, Ste. 111, North Highlands, CA 95670

916.349.7500

Technology Access Program at Gallaudet University (TAP)

Contact: Christian Vogler, Ph.D. • christian.vogler@gallaudet.edu

Director, Technology Access Program

Department of Communications Studies

SLCC 1116, Gallaudet University

800 Florida Avenue NE, Washington, DC 20002

202.250.2795

tap.gallaudet.edu

EXECUTIVE SUMMARY

Telecommunications for the Deaf and Hard of Hearing Inc. (TDI), the National Association of the Deaf (NAD), the Hearing Loss Association of America (HLAA), the Association of Late-Deafened Adults (ALDA), the Cerebral Palsy and Deaf Organization (CPADO), the Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN), and the California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH), collectively, “Consumer Groups,” and the Technology Access Program at Gallaudet University (TAP) respectfully submit this report on the state of closed captioning of Internet Protocol (“IP”)-delivered video programming.

More specifically, this report analyzes compliance by video programming owners (“VPOs”) and video programming distributors (“VPDs”) with the Commission’s recently enacted requirement that IP-delivered live and near-live full-length video programming be provided with closed captions. This report also analyzes the state of captioning of IP-delivered video clips, based on the Commission’s commitment in the *IP Captioning Order* to reconsider the applicability of the IP captioning rules to video clips in the absence of voluntary captioning efforts by VPOs and VPDs.

We tested a diverse sample of video programming and playback apparatus combinations, including clips and full-length programs on various hardware devices, web browsers, and native applications designed for specific mobile operating systems. At the outset, we found a relatively high rate of captioning for undivided full-length programming. More specifically, only 10% of our observations of undivided full-length videos found uncaptioned programming. However, we observed troubling instances of missing captions, particularly with critical news programs simulcast for IP delivery. For example, CNN.com and Foxnews.com, both popular VPD websites, delivered simulcast online coverage of the Boston marathon bombing without captions.

We also observed that VPDs primarily delivered live and near-live programming divided into segments or video clips of full-length programming, rather than in

undivided full-length form. While the Commission's rules cover segmented full-length programming and not video clips, we were often unable to determine with certainty whether a particular video was a segment covered by the rules or an uncovered clip.

Notwithstanding the difficulty in differentiating between segments and video clips, the vast majority of segments and clips that we observed were provided without captions. Specifically, 76% of our observations of videos that we suspected constituted segments found uncaptioned programming, including 70% of our observations of news segments and 93% of our observations of non-news segments.

The results were even more troubling with respect to programming delivered as video clips. Specifically, 87% of our observations of video clips found uncaptioned programming, including 77% of our observations of news clips and 90% of our observations of non-news clips.

We also observed systemic problems beyond the provision of captions, including:

- The widespread inability of web browsers and applications on mobile devices to render captions;
- Ineffective, poor quality captions; and
- The failure of VPDs to clearly identify captioned programming.

In light of these observations, we urge the Commission take immediate action to ensure that critical IP-delivered news and other programming is accessible to deaf and hard of hearing consumers. Specifically, the Commission should grant the petition of several of the Consumer Groups for reconsideration of the *IP Captioning Order* and require captioning for IP-delivered video clips. The Commission should also adopt quality standards for television captions to ensure that programming is delivered with high-quality captions when delivered over IP, pursue enforcement actions against noncompliant VPDs and VPOs, and explore solutions to ensure that VPDs properly label captioned programming.

TABLE OF CONTENTS

Executive Summary	ii
Discussion	1
I. Background and Methodology	1
II. Analysis and Results	4
A. Some undivided full-length programming was provided without captions.	4
B. It was often unclear whether programs were delivered as covered “segments” of full-length programming or uncovered “video clips.”	5
C. The vast majority of our observations of segments and video clips found uncaptioned programming.	9
D. Mobile web browsers and applications frequently lack captioning functionality.	14
E. Captions were provided with pervasive quality problems.	14
F. Programming often lacked sufficient information to identify whether it was captioned without beginning playback.	17
III. Recommendations	17
A. The Commission should require video clips to be provided with captions by granting Consumer Groups’ petition for reconsideration of the <i>IP Captioning Order</i>	18
B. The Commission should issue television caption quality rules pursuant to the <i>Closed Captioning Review</i> and pursue enforcement actions against IP VPOs who fail to provide captions equal in quality to television captions.	20
C. The Commission should explore solutions to ensure that IP-delivered programs with closed captions are clearly identified.	22
IV. Conclusion	23
Appendix	25

DISCUSSION

I. Background and Methodology

In enacting the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”), Congress required the Commission to promulgate rules ensuring equal access to IP-delivered video programming for deaf and hard of hearing consumers.¹ In the January 2012 *IP Captioning Order*, the Commission set forth various captioning responsibilities for VPOs, video programming providers, and VPDs to provide IP-delivered video programming with closed captions.²

The Commission established captioning deadlines for specific types of full-length IP-delivered, non-archival programming, including September 30, 2012 for all prerecorded programming that is not edited for Internet distribution and March 30, 2013 for all live and near-live programming.³ In the *IP Captioning Order*, the Commission also urged VPOs and VPDs to caption programming delivered in the form of “video clips.”⁴ The *Order* emphasized that the Commission would consider covering video clips under the IP captioning rules in the event that VPOs and VPDs failed to voluntarily ensure that deaf and hard of hearing consumers had access to “critical areas of programming, such as news.”⁵

Against this backdrop, the Institute for Public Representation at Georgetown Law tested 1219 combinations of IP-based video playback platforms and video programming, observing the availability of closed captions on each. We began testing pre-recorded programming on January 20, 2013 and live/near live programming on

¹ See Pub. L. 111-260, 124 Stat. 2751 § 202(b) (codified at 47 U.S.C. 613(b)) (“CVAA”); *Closed Captioning of Internet Protocol-Delivered Video Programming, Report and Order*, MB Docket No. 11-154, 27 FCC Rcd. 787, 790-91, ¶ 4 (Jan. 13, 2012) (“*IP Captioning Order*”).

² See generally *IP Captioning Order*, 27 FCC Rcd. 787.

³ 47 C.F.R. § 79.4(b).

⁴ *IP Captioning Order*, 27 FCC Rcd. at 817-18, ¶ 48.

⁵ See *id.*

April 1, 2013, concluding testing on April 18, 2013. To capture a wide range of data, we tested videos on a variety of platforms, including smartphones, tablets, and laptop computers through various web browsers and applications, recording the date we tested each program and the date of the original television exhibition. The complete results of our observations are detailed in the attached Appendix and analyzed below.

In order to sample a diverse cross-section of the IP video marketplace, we observed full-length programming and video clips from a variety of popular programming across different genres, formats, and networks. More specifically, we observed full-length programming and video clips from:

- All news shows airing on three national broadcast networks producing national news programming (ABC, CBS, and NBC);
- Top rated news programming from the three cable news outlets with the highest Nielsen ratings (Fox News, CNN, and MSNBC);⁶
- Local news programming from five major broadcast network affiliates (ABC, CBS, Fox, NBC, and the CW) in the three largest television markets (New York, Los Angeles, and Chicago);⁷
- Popular pre-recorded and live/near-live non-news programming from the five major broadcast networks (ABC, CBS, Fox, NBC, and the CW),⁸ PBS,

⁶ See *Cable News Ratings 2012: Top 30 Programs Of The Year*, Huffington Post (Dec. 14, 2012), http://www.huffingtonpost.com/2012/12/14/cable-news-ratings-2012_n_2300780.html (providing information on cable news ratings and popularity).

⁷ *Top 100 Television Markets*, Station Index, <http://www.stationindex.com/tv/tv-markets> (last visited Jan. 29, 2013).

⁸ See Sara Bibel, *CBS Leads Among Adults 18-49 and With Total Viewers in Week 17 Ending January 20, 2013*, TVbytheNumbers, (Jan. 23, 2013), <http://tvbythenumbers.zap2it.com/2013/01/23/cbs-leads-among-adults-18-49-and-with-total-viewers-in-week-17-ending-january-20-2013/166073/> (discussing and listing the five major broadcast television networks).

and the top 25 cable outlets delivering original non-archival programming via IP.⁹

We chose popular non-news programs by looking at *Entertainment Weekly's* lists of the most popular programming for Fall 2012 and top cable programming of 2012 – lists based on aggregate Nielsen ratings information.¹⁰ However, where high-rated non-news programming was not available via IP, we selected substitutes from the “Popular Shows” list of the Internet VPD Hulu, which ensured that programming more popular on the Internet than on television was also represented.¹¹ In order to keep our sample from over-representing any single network, we selected the top shows for each network instead of the top shows overall. Where available, we tested at least two full-length episodes and three video clips or segments of full-length programs from each sampled show, and at least two shows from each sampled television network.¹²

Where available, we tested programming on different platforms in order to pinpoint the origins of captioning problems or omissions. For example, we tested the April 6, 2013 episode of *Saturday Night Live* on two different devices: an Apple MacBook Pro laptop computer running OS X 10.6, and an Apple iPad 4 running iOS 6. We tested the episode on each device through the NBC and Hulu websites using the Google Chrome and mobile Safari browsers and through the NBC iOS mobile application.

During each test, we took the following steps:

- 1) Load the browser or application and navigate to the subject video;
- 2) Start playback of the video;

⁹ See *Top 25 Cable Programming Networks 1-23*, NCTA, <http://www.ncta.com/Stats/TopNetworks.aspx> (last visited Feb. 1, 2013) (listing the top rated cable networks).

¹⁰ Lynette Rice, *Fall 2012: Most Popular Shows So Far* (Oct. 23, 2012), <http://insidetv.ew.com/2012/10/23/fall-2012-most-popular-shows-so-far-2>.

¹¹ *Popular Shows*, Hulu, <http://www.hulu.com/tv/popular/shows> (last visited Feb. 1, 2013) (note that “Popular Shows” on Hulu are constantly changing).

¹² A complete list of the observed programming is available in the attached Appendix.

- 3) Locate the closed captioning button or control, if available, and turn on captions, if not already enabled;
- 4) Verify that the video contains sound that should be captioned;
- 5) Investigate whether the video controls allow changes to caption appearance, such as font, color, size, etc.; and
- 6) Close browser or app and repeat steps 1-5 in another browser or app, repeating the test on the same program or clip.

II. Analysis and Results

During our testing, we observed that some undivided full-length programming was provided without captions, including critical news programming. We also observed that a significant proportion of programming was delivered divided into segments or video clips, and that it was often difficult to determine with certainty whether a video was a segment of a full-length program and thus covered under the rules, or instead a video clip exempt from the rules. Regardless, the vast majority of our observations of both segmented programming and video clips found uncaptioned programming. We also observed a lack of captioning functionality on mobile device web browsers and applications, pervasive caption quality problems, and a general lack of identifying information for captioned IP-delivered programming.

A. Some undivided full-length programming was provided without captions.

Approximately 10% of our observations of undivided full-length programming found uncaptioned programming, including 14% of our observations of live/near-live programming and 8% of our observations of prerecorded programs. While the provision of captions was relatively widespread among undivided full-length programs, we nevertheless observed significant instances of missing captions. In particular, we noted news programming simulcast on VPOs' websites often was provided without captions, including critical emergency programming. For example, we observed that CNN.com and Foxnews.com simulcast online their television

coverage of the Boston marathon bombing without captions. We also noted that some full-length programs delivered on Hulu, such as *The Colbert Report* and *Live with Jimmy Kimmel*, were not provided with captions for between one and two days after the program was initially made available via IP.¹³

B. It was often unclear whether programs were delivered as covered “segments” of full-length programming or uncovered “video clips.”

Moreover, a substantial proportion of the programs we observed – particularly live/near-live program news programs – were not delivered via IP in undivided, full-length form. Instead, many programs were delivered over IP in segment or video clip form. This practice allows consumers to view specific news stories, comedy sketches, or program features individually. For example, shows such as *60 Minutes*, *Face The Nation*, *The O’Reilly Factor*, *Hardball*, and *NBC Nightly News* were only available as segments or clips over IP delivery. Other programs, such as *The Daily Show*, *The Colbert Report*, *This Week*, and *Good Morning America* were available online as both undivided full-length programs and as segments or clips.

Whether such videos are covered under the IP captioning rules involves a complex factual determination. Rule 79.4(a)(2) specifies that programming distributed “substantially in its entirety” is “full-length programming” required to be provided with captions under Rule 79.4(b), but excludes “video clips.”¹⁴ The *IP Captioning Order* explains that “[w]hen substantially all of a full-length program is available via IP, [the Commission] will not consider that program to be a ‘clip,’ but rather, a ‘full-length program’ subject to the IP closed captioning requirements.”¹⁵ The *Order* also notes that

¹³ For example, when the April 17, 2013 episode of “The Colbert Report” was viewed on Hulu one day after the episode aired on television, no captions were present, but when viewed the next day on Hulu, captions were present.

¹⁴ See 47 C.F.R. § 79.2(a)(2).

¹⁵ *IP Captioning Order*, 27 FCC Rcd. at 816, ¶ 45.

“a full-length program posted online in multiple segments, to enable consumers to more readily access a particular segment of the program, constitutes full-length programming and will have to be captioned,” and that covered entities are not permitted, for example, “simply to shave off a few minutes (or brief segments) from a full-length half hour program just to avoid fulfilling [their] captioning obligations”¹⁶

However, the legal distinction between “segments” and “clips” is difficult to apply in practice, and it was often impossible to determine with certainty whether a particular excerpted video was a covered “segment” or an uncovered “clip.” First, it was often difficult to tell whether several shorter videos from the same full-length program, delivered together, added up to “substantially all” of the full-length program without the ability to compare the IP-delivered videos to the undivided program that aired on television or information about the undivided program’s length. For example, NBC’s website contains three numbered videos ranging in length from 11 to 19 minutes from the April 14, 2013 episode of *Meet the Press*; without access to the undivided episode, it is difficult to tell whether the videos together constitute “substantially all” of the episode, rendering each a covered “segment,” or less than “substantially all” of the episode, rendering each an uncovered “video clip.”¹⁷

¹⁶ *Id.* at 816-17, ¶ 45.

¹⁷ See 1: Marco Rubio talks immigration, gun control, *Meet the Press*, NBC (April 14, 2013), <http://www.nbcnews.com/id/3032608/#51534312> (last visited April 21, 2013); 2: Gillibrand, Lee on the Bottom Line, *Meet the Press*, NBC (April 14, 2013), <http://www.nbcnews.com/id/3032608/#51534618> (last visited April 21, 2013); 3: Behind Jackie Robinson’s Legacy, *Meet the Press*, NBC (April 14, 2013), <http://www.nbcnews.com/id/3032608/#51534618> (last visited April 21, 2013).

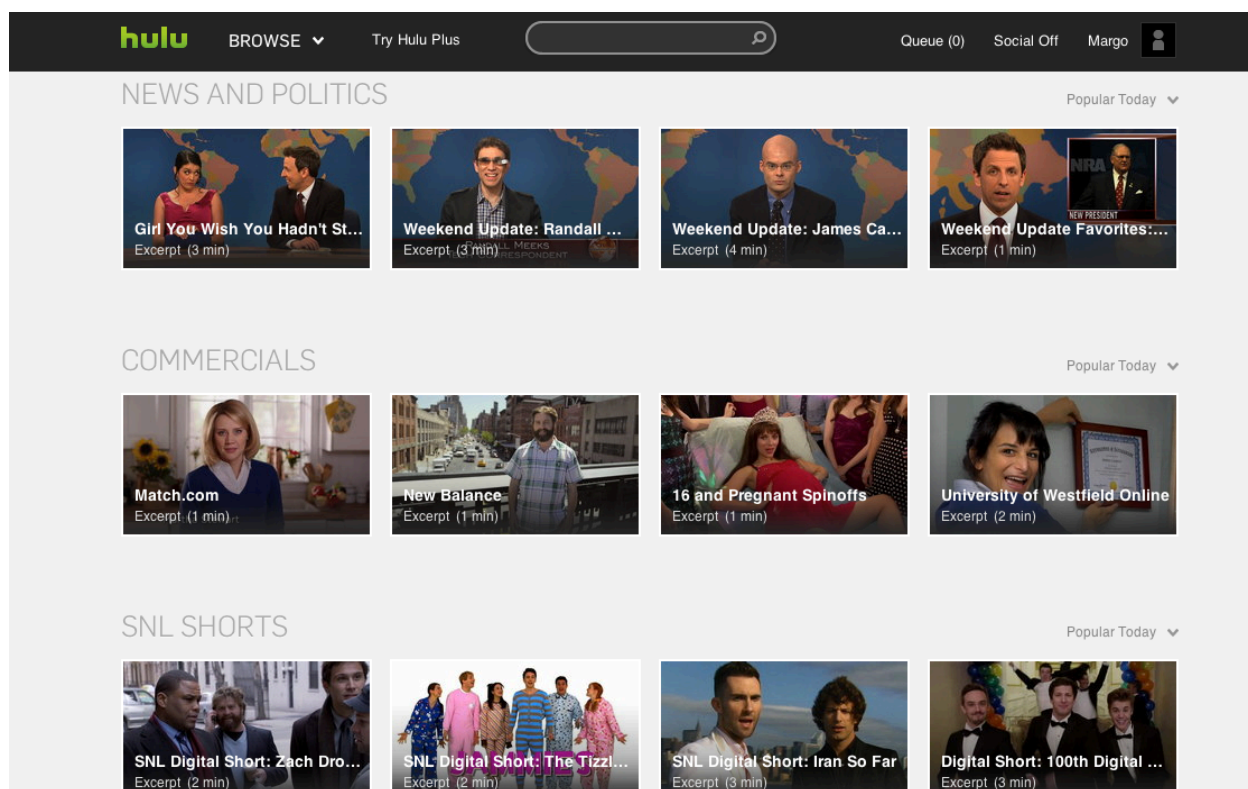


Screenshot of related videos from April 14, 2013 episode of *Meet the Press*

Second, it was often unclear whether a video was provided along with the other videos that together would constitute “substantially all” of the full-length program. While videos taken from the same full-length program are sometimes grouped together, they can also be scattered throughout a VPD’s website or application, making it difficult to tell whether the excerpts add up to “substantially all” of the video program. For example, Hulu’s website for *Saturday Night Live* contains video segments from separate episodes of the program scattered on various categorical pages, such as “News and Politics,” “SNL Shorts,” and featured performer collections.¹⁸ However, other segments from those same episodes are also available elsewhere on the site and together may constitute “substantially all” of the full-length episodes that aired on television.¹⁹

¹⁸ *Saturday Night Live*, Hulu, <http://www.hulu.com/saturday-night-live> (last visited May 6, 2013).

¹⁹ *Id.*

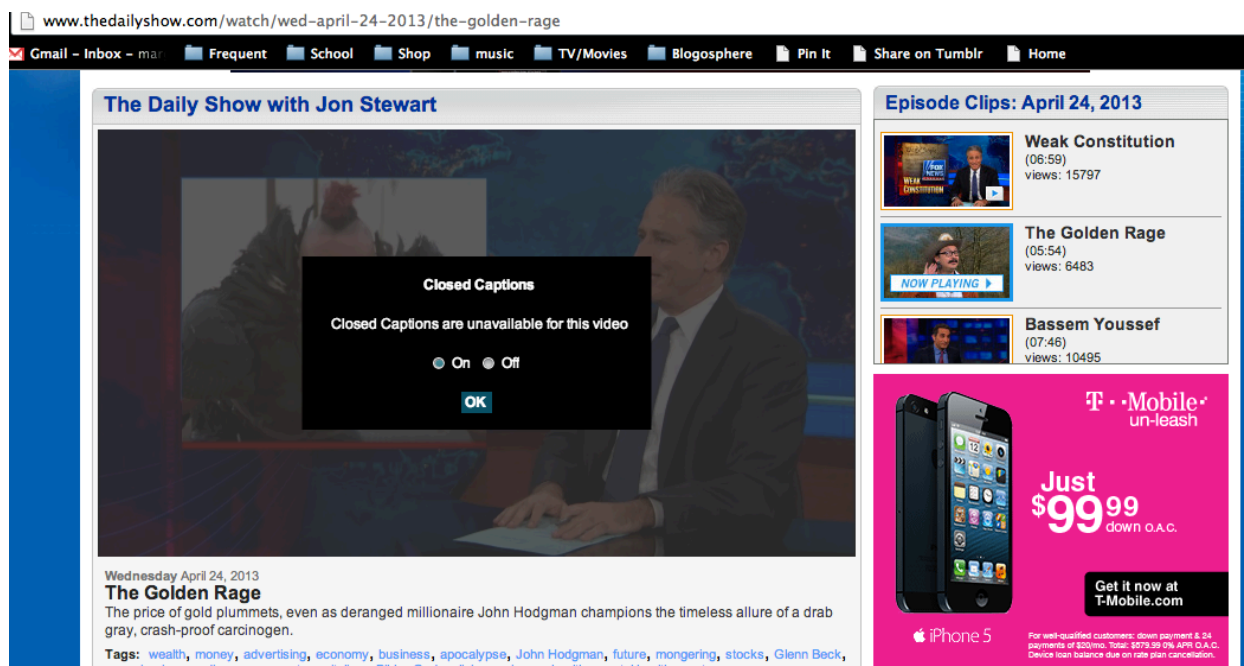


Screenshot of *Saturday Night Live* videos on Hulu

Finally, some VPD websites referred to videos as “clips” regardless of their legal status under the IP captioning rules. For example, we observed that opening a video on *The Daily Show* website opened a new page featuring that video along with other videos from the same episode labeled “Episode Clips,” suggesting that the videos were uncovered “video clips.”²⁰ However, we observed that several videos of *The Daily Show* labeled as “clips” in fact appeared to be “segments” that together constituted “substantially all” of the full-length episode of *The Daily Show* that aired on television.²¹

²⁰ *Weak Constitution*, *The Daily Show*, Comedy Central (April 24, 2013), <http://www.thedailyshow.com/watch/wed-april-24-2013/weak-constitution> (last visited April 29, 2013).

²¹ *See id.*



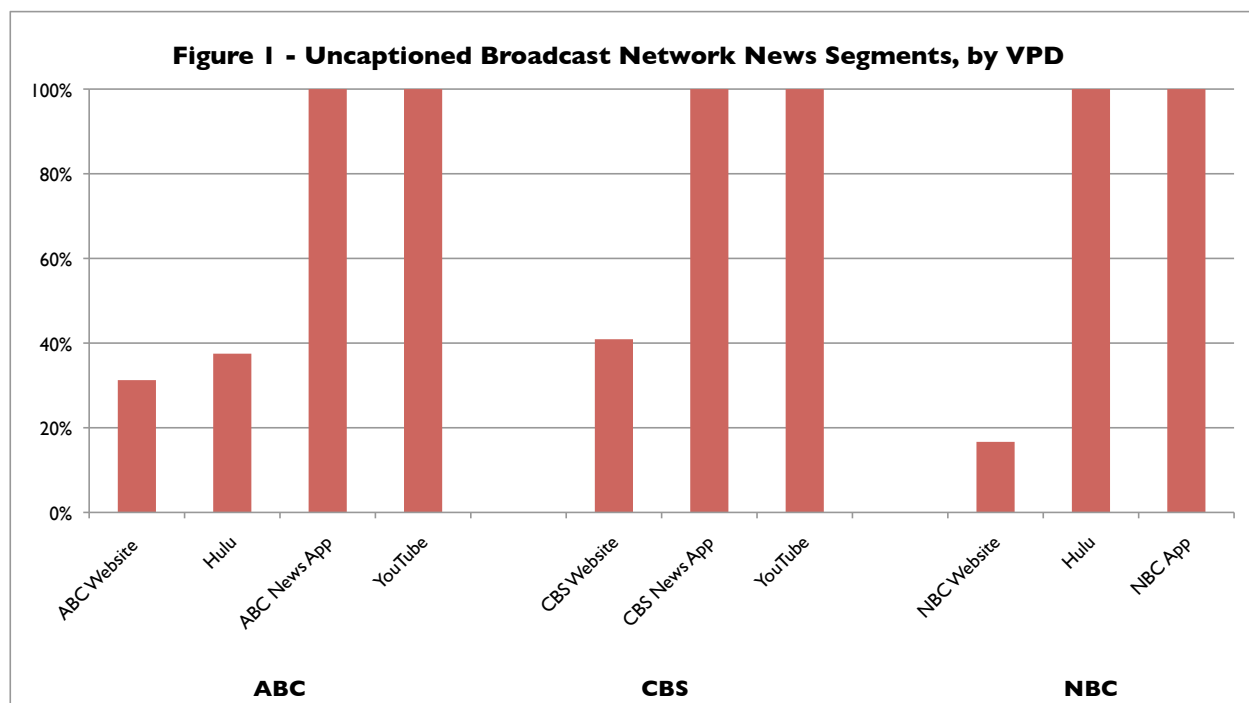
Screenshot of "Episode Clips" on *The Daily Show* website

C. The vast majority of our observations of segments and video clips found uncaptioned programming.

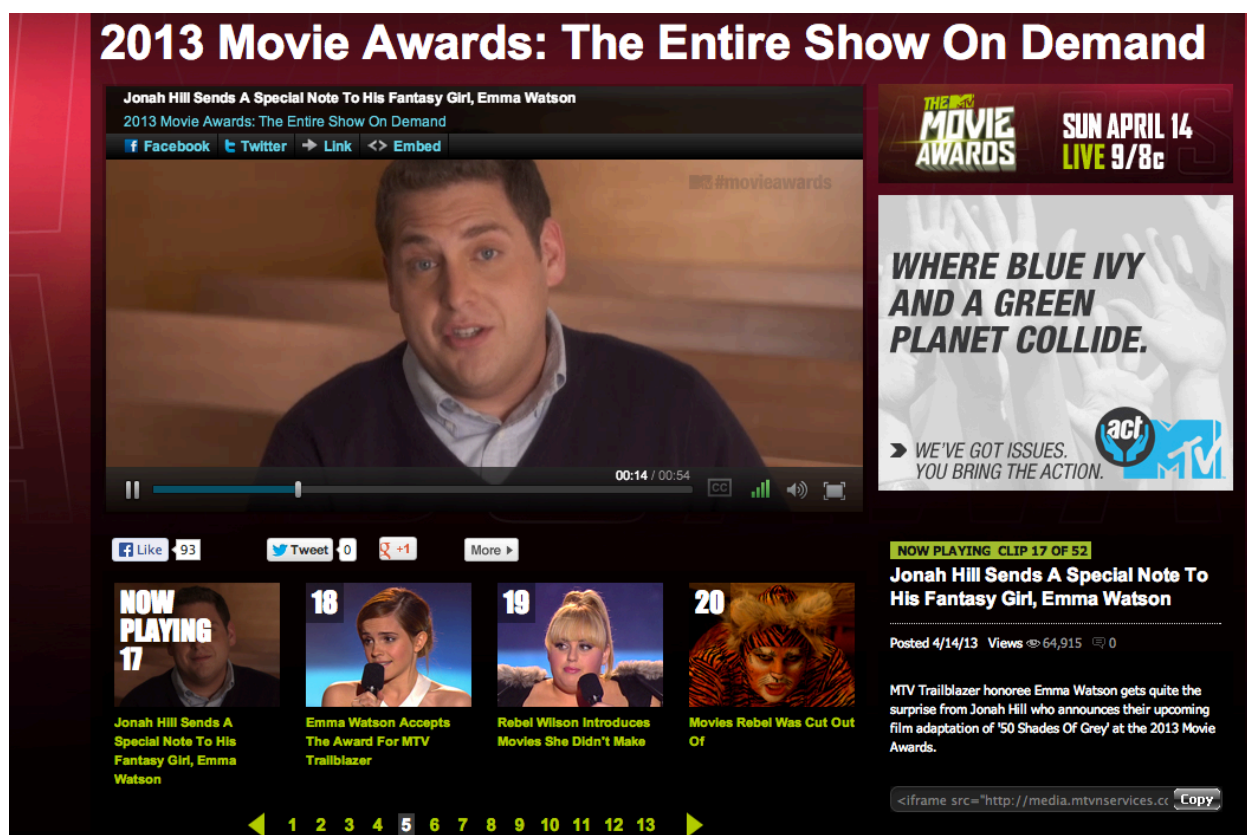
Notwithstanding the difficulty in differentiating between covered "segments" and uncovered "video clips," we attempted to identify programming with indicia of segmentation and categorize it separately from clipped programming. Regardless, the vast majority of our observations of videos that we suspected were covered "segments" — 76% — and uncovered "video clips" — 87% — found uncaptioned programming. We further analyzed each type of programming across both news and non-news programming.

Uncaptioned Programming in Observations of Segments and Video Clips (%)		
	<i>Segments</i>	<i>Video Clips</i>
<i>News</i>	70%	77%
<i>Non-News</i>	93%	90%

News Segments. Approximately 70% of our observations of segmented news videos found uncaptioned programming. We also observed that while some segments of broadcast (non-cable) network news contained captions when viewed on VPOs' websites, those segments were not captioned when viewed on other devices or platforms. For example, a segment from *NBC Nightly News* entitled "NRA-Funded Study Encourages Guns in Schools" included captions when viewed through NBC's website on a laptop computer, but was not captioned when viewed through that same computer on the Hulu website or on the *NBC Nightly News* iPhone application.



Non-News Segments. Approximately 93% of our observations of segmented non-news videos found uncaptioned programming. For example, the *MTV Movie Awards*, aired on April 14, 2013, could be viewed on mtv.com in their entirety by watching 51 individual segments – at least several of which did not contain captions.²²

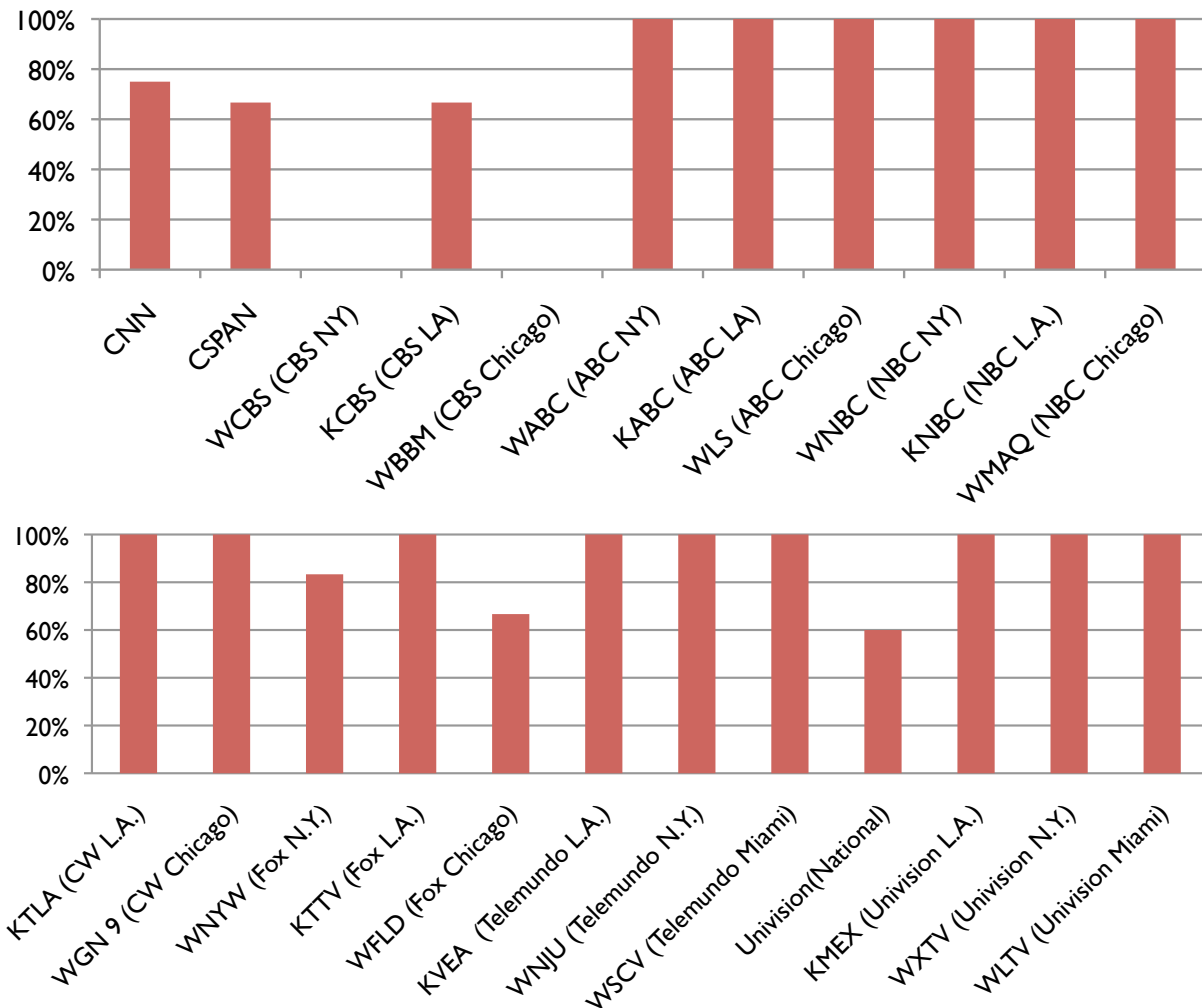


Screenshot of *MTV Movie Awards* Segments

²² See *Jonah Hill Sends A Special Note To His Fantasy Girl, Emma Watson, The MTV Movie Awards*, MTV, <http://www.mtv.com/videos/misc/898732/jonah-hill-sends-a-special-note-to-his-fantasy-girl-emma-watson.jhtml?id=1704846> (last visited April 16, 2013).

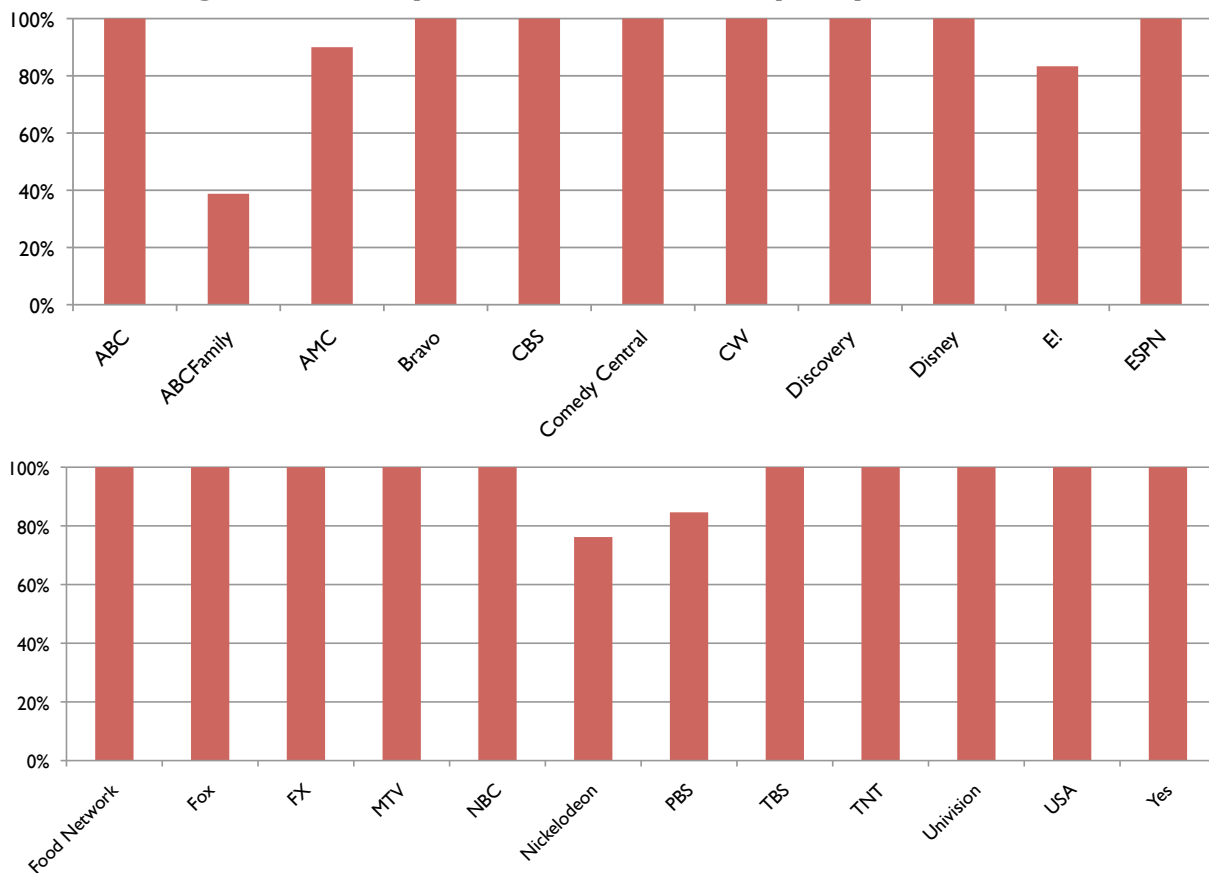
News Video Clips. Approximately 77% of our observations of news video clips found uncaptioned programming. We also observed that while some simulcast news programming was provided with captions, a substantial number of programmers did not provide any on-demand news programming in non-clip form for IP delivery.

Figure 2 - Uncaptioned News Clips



Non-News Video Clips. Approximately 90% of our observations of non-news video clips found uncaptioned programming. More specifically, nearly all of our observations of live/near-live non-news clips and approximately 89% of our observations of pre-recorded non-news clips found uncaptioned programming. In the rare instances where non-news clips were captioned, the captions were usually only available on clips viewed directly through the VPO's website using a laptop, and not when viewed through a third-party VPD websites or a mobile application.

Figure 3 - Uncaptioned Non-News Clips, By Network



D. Mobile web browsers and applications frequently lack captioning functionality.

We also observed that no web browsers on mobile devices such as smartphones or tablets enabled the display of closed captions. While many VPDs' websites include captioning capability when accessed through web browsers on laptop and desktop computers, those websites lack captioning capability when accessed via web browsers on mobile devices.²³

We also observed that most VPDs' dedicated mobile applications did not support closed captions for video clips, even when the clips we observed through those applications were provided with captions when viewed through the VPD's website or when the application enabled captions for non-clip videos. 95% of our observations of video clips through mobile applications found uncaptioned programming.

E. Captions were provided with pervasive quality problems.

Although we did not design our methodology to systemically test for captioning quality problems, it became apparent early in our observations that a significant amount of captioned programming had serious quality problems that effectively rendered the programming inaccessible to viewers who are deaf or hard of hearing. We observed numerous instances of entirely uncaptioned speech, misspelled or incorrect words, captions displayed out of sync with corresponding visual events, captions displayed in illegibly small font, and captions that displayed only a single word or letter at a time. In particular, the captions on a significant number of programs, including popular late-night programming such as *The Daily Show* and *The Colbert Report*, contained repeated and numerous spelling errors and missing words and sentences. We

²³ We noted this same issue in our December 2012 Report on captioning compliance. See *Report on Initial Compliance with the Commission's IP Closed Captioning Rules*, MB Docket No. 11-154 (Dec. 20, 2012), <http://apps.fcc.gov/ecfs/comment/view?id=6017153909>.

suspect that some of these errors, particularly with live/near-live programming, stem from the improper conversion of roll-up captions for IP delivery.



Screenshot of illegibly small captions on *Bunheads*

We observed particularly pervasive problems with the quality of captions on programming provided by Univision. While 91% of the programming that we observed from Univision had captions, nearly all of Univision's captions were practically unreadable, even to a fluent Spanish reader. For example, several episodes of *Amores Verdaderos* on Univision's website displayed captions that were twenty to thirty seconds ahead of the video, making it impossible to quickly associate the captioned text with corresponding visual events. Similarly, some news programs, such as *Al Punto* and *Despierta America*, contained captions that displayed only one word or even one letter at a time, flashing on the screen in rapid succession. We also observed numerous instances of dropped words and misspellings.



Screenshot of one-letter caption on *Despierta America*

We also observed many programs on VPOs' official YouTube pages that used YouTube's automatic captioning feature. YouTube uses automatic captions ("auto-captions"), which are automatically generated on uploaded uncaptioned videos of a certain length and quality.²⁴ However, as YouTube warns, its auto-caption technology is often imprecise and generates words that do not correspond to spoken dialogue.²⁵ While YouTube offers video uploaders the ability to manually correct errors in

²⁴ *Automatic captions*, YouTube (April 18, 2013), <https://support.google.com/youtube/bin/answer.py?hl=en&answer=3038280>.

²⁵ See *id.* For example, auto-captions on a clip of the program *Downton Abbey* posted on PBS's official YouTube account for the line "out of sight, out of mind" read "house retest mines." *Downton Abbey, Season 3, A Scene from Episode 4*, YouTube (Jan. 27, 2013), <http://www.YouTube.com/watch?v=3zDBPXWH2D4> (last visited Feb. 13, 2013) (at 00:29).

automatically generated captions, many VPOs do not correct the captions of their videos.²⁶

F. Programming often lacked sufficient information to identify whether it was captioned without beginning playback.

Throughout our testing, we often encountered difficulty in determining whether a particular video was (or was intended to be) captioned in advance of watching the video. In particular, lists of programming frequently lacked the universal “CC” logo or a similar label indicating whether individual programs were captioned. We also observed that VPDs provided buttons to enable closed captioning appeared in different places and with different appearances through different video programming distributors. On many videos, a closed captioning button was present and appeared to be enabled even when no captions were available for the video being played. We also noted because most advertisements were not captioned, it was impossible to tell whether a video would be captioned without first watching an uncaptioned advertisement and waiting for the video to begin playback.

III. Recommendations

Our testing makes clear that a variety of specific problems have impeded the implementation of the CVAA’s goal of equal access to video programming for viewers who are deaf or hard of hearing. Accordingly, we recommend that the Commission cover video clips under the IP captioning rules, enact television caption quality standards, and explore solutions for identifying captioned content.

²⁶ See *Automatic captions*, *supra* n.24.

A. The Commission should require video clips to be provided with captions by granting Consumer Groups’ petition for reconsideration of the *IP Captioning Order*.

In the *IP Captioning Order*, the Commission acknowledged the concern of members of Congress that exempting video clips from the IP captioning rules would risk denying deaf and hard of hearing consumers equal access to critical areas of IP-delivered programming.²⁷ The Commission urged VPOs and VPDs to voluntarily caption video clips, and emphasized that if it found that “consumers who are deaf or hard of hearing are not getting access to critical areas of programming, such as news, because of the way the programming is posted,” it would reconsider covering video clips under the IP captioning rules “to ensure that [the] rules meet Congress’s intent to bring captioning access to individuals viewing IP-delivered programming.”²⁸

In an April 2012 petition for reconsideration of the *IP Captioning Order*, several of the Consumer Groups urged the Commission to act swiftly to cover video clips under the IP captioning rules and ensure that deaf and hard of hearing consumers would not be denied access to critical areas of programming, particularly news and informational programming.²⁹ The petition demonstrated that the CVAA does not authorize the Commission to exclude video clips from the rules and expressed deep concern that VPOs and VPDs would not act to caption video clips unless the Commission specifically required them to do so.³⁰

One year later, our testing confirms that deaf and hard of hearing consumers are being widely denied access to critical areas of programming because VPOs and VPDs are not voluntarily captioning video clips. An overwhelming majority of our

²⁷ *IP Captioning Order*, 27 FCC Rcd. at 817-18, ¶ 48.

²⁸ *Id.*

²⁹ *Petition for Reconsideration of TDI, et. al.*, MB Docket No. 11-154, at 1-17 (April 27, 2012) (“2012 Consumer Groups PFR”).

³⁰ *Id.*, at 12-17.

observations of video clips – 87% – found uncaptioned programming. We also observed that a significant proportion of IP-delivered news is delivered in clip form without captions, which were missing in 77% of our observations of news clips.³¹ In short, the voluntary clip captioning that the Commission urged the industry to undertake, particularly with news programming, has become the exception rather than the rule.

Nevertheless, the ability of some VPOs and VPDs to provide captioned clips confirms that industry concerns over technical barriers to captioning clips were overblown.³² Instead, it appears that the vast majority of VPOs and VPDs are simply choosing not to caption clips because the Commission is not requiring them to do so.

Our testing also suggests the failure of VPOs and VPDs to caption video clips appears to be spilling over to segmented full-length programming. Though segmented full-length programs are definitively covered under the IP captioning rules, the vast majority of our observations of segments – 76% – found uncaptioned programming, including 70% of our observations of news segments.

These results suggest that the difficulty in distinguishing between “segments” and “clips” is leading VPOs and VPDs to avoid captioning segmented full-length programming that the Commission explicitly intended to cover under the rules.³³ Worse, the widespread failure of VPOs and VPDs to caption segmented full-length programming covered under the rules exacerbates the confusion faced by deaf and hard of hearing consumers when trying to determine whether a particular IP-delivered program is supposed to be captioned.

³¹ Specifically, none of the local news channels we observed contained full-length news programs over IP delivery, except as simulcast live streams that were only available at the time of the television broadcast.

³² *IP Captioning Order*, 27 FCC Rcd. at 816, n.194.

³³ *See id.* at 816-17, ¶ 45.

The widespread failure of VPOs and VPDs to caption video clips and segments of critical news and other programming confirms that the exclusion of video clips from the IP captioning rules is a disservice to the public interest and undermines Congress' intent in enacting the CVAA. Accordingly, we urge the Commission to grant our petition for reconsideration and cover video clips under the IP captioning rules.

B. The Commission should issue television caption quality rules pursuant to the *Closed Captioning Review* and pursue enforcement actions against IP VPOs who fail to provide captions equal in quality to television captions.

Nearly a decade ago, several of the Consumer Groups filed a petition for rulemaking urging the Commission to establish quality standards for television closed captioning, including minimum requirements for completeness, accuracy, readability, and synchronicity.³⁴ The Commission granted the petition and proposed the possibility of quality standards in a 2005 notice of proposed rulemaking ("*Closed Captioning Review*").³⁵ Since launching the *Closed Captioning Review*, the Commission has developed a lengthy record on quality issues, including during a 2010 refresh proceeding, but has not yet issued quality standards.³⁶

The need to implement quality standards for television captions has become even more critical in light of the Commission's decision in the *IP Captioning Order* to require VPOs to provide captions for IP-delivered programming "with at least the same quality as the television captions provided for the same programming" and to require VPDs to

³⁴ *Petition for Rulemaking of TDI, et al.*, RM-11065, CG Docket No. 05-231, ET Docket No. 99-254 (filed July 23, 2004), <http://apps.fcc.gov/ecfs/comment/view?id=5511440137> ("*2004 Consumer Groups PFR*").

³⁵ See generally *Closed Captioning of Video Programming; Telecommunications for the Deaf, Inc. Petition for Rulemaking, Notice of Proposed Rulemaking*, CG Docket No. 05-231, 20 FCC Rcd. 13,211 (July 21, 2005).

³⁶ See generally *Consumer & Governmental Affairs Bureau Seeks to Refresh the Record on Notices of Proposed Rulemaking Regarding Closed Captioning Rules*, CG Docket No. 05-231, ET Docket No. 99-254, 25 FCC Rcd. 15,056 (Oct. 25, 2010) ("*2010 Refresh*").

“maintai[n] the quality of the captions provided by the [VPO].”³⁷ Under the *IP Captioning Order*, the provision of high-quality captions for IP-delivered programming is contingent upon the provision of high-quality captions for that same programming on television.

Unfortunately, our testing confirms that the quality of captions on IP-delivered programming is abysmal. Improperly synchronized captions with misspellings, missing words and sentences, and various other errors were commonplace and widespread throughout our observations of all types of IP-delivered programming. These quality problems are largely similar to those observed by the Consumer Groups and others in the *Closed Captioning Review* proceeding.³⁸

The Commission undoubtedly should investigate and pursue enforcement actions against VPOs and VPDs who violate Rule 79.4(c)(1)(i) and (2)(i) by failing to deliver IP captions with quality equal to television captions and maintain that quality for delivery to the end user.³⁹ However, enforcing the IP captioning quality rules requires an *ex post* comparison between the IP and television captions of a program to determine whether poor-quality IP captions violate the rules. Consumers observing quality problems with captions on IP-delivered programming generally have no way to view the television captions provided for the same programming, because IP-delivered programming is generally aired on television prior to, or simultaneously with, IP delivery.

To address this critical problem, we urge the Commission to act on the well-established record in the *Closed Captioning Review* and immediately implement quality

³⁷ *IP Captioning Order*, 27 FCC Rcd. at 812, ¶ 37.

³⁸ See, e.g., 2004 Consumer Groups PFR at 9-10, 35-39; *Reply Comments of TDI, et al.*, CG Docket No. 05-231, at 3-12 (Dec. 16, 2005), <http://apps.fcc.gov/ecfs/document/view?id=6518190176>; *Comments of TDI, et al.*, CG Docket No. 05-231, ET Docket No. 99-254, at 3-7 (Nov. 24, 2010), <http://apps.fcc.gov/ecfs/document/view?id=7020921539>.

³⁹ See 47 C.F.R. § 79.4(c)(1)(i) and (2)(i).

standards for television captions. Once television quality standards are in place, the IP captioning rules will accordingly require equally high-quality IP captions. Thus, the adoption of television quality standards will simplify monitoring and enforcement of the Commission's IP quality standards and ensure that deaf and hard of hearing consumers are afforded equal access to IP-delivered video programming through the provision of high-quality captions, as Congress intended.

C. The Commission should explore solutions to ensure that IP-delivered programs with closed captions are clearly identified.

Throughout our testing, we observed that many IP-delivered programs are not clearly identified as "captioned." The failure to clearly communicate whether programs contain captions makes it difficult for deaf and hard of hearing consumers to identify accessible programming. When a program is not clearly identified, a consumer must go through several steps to manually determine whether any given program is accessible:

- Navigate to the VPD's website or application and locate the desired program;
- If there is no label, click on the program to open it and navigate through any intermediate or landing page;
- If there is no label, begin playback of the program;
- Wait through initial advertisement (because the program may be captioned even if the advertisement is not);
- Once the program begins playing, look for a "CC" button or similar control and click on it (which may or may not enable captions);
- If no captions appear, repeat the above steps in another web browser, application, or device to ensure that captions are not simply missing due to a technical incompatibility or malfunction

Requiring deaf and hard of hearing consumers to undertake these time-consuming steps simply to determine whether a program contains captions is inconsistent with the

CVAA's goal of equal access. In the absence of ubiquitous captioning requirements for IP-delivered programming, we urge the Commission and industry representatives to explore solutions for systemically and clearly identifying captioned programming.

IV. Conclusion

We commend the Commission for its dedication and commitment to ensuring that all Americans can access the benefits of video programming on equal terms. The relatively widespread captioning of undivided prerecorded and live/near-live IP-delivered programming represents a substantial step on the path toward equal access for people who are deaf or hard of hearing.

However, the widespread lack of captioning on IP-delivered segmented programming and video clips, pervasive caption quality problems, and lack of captioning identification that we observed make clear that more work will be necessary to achieve the CVAA's goals. Accordingly, we urge the Commission to act swiftly to cover video clips under the IP captioning rules, implement caption quality standards, and explore solutions for identifying captioned programming.

Blake E. Reid

/s/

Counsel to TDI

May 16, 2013

Margarita A. Varona

Diana Cohn

Student Clinicians

Institute for Public Representation

Georgetown Law

600 New Jersey Ave. NW

Washington, DC 20001

202.662.9545

blake.reid@law.georgetown.edu

Cc:

Commissioner Mignon Clyburn

Commissioner Jessica Rosenworcel

Commissioner Ajit Pai

Priscilla Argeris, Office of Commissioner Rosenworcel

Dave Grimaldi, Office of Commissioner Clyburn

Matthew Berry, Office of Commissioner Pai

William Lake, Media Bureau

Diana Sokolow, Media Bureau

Jeffrey Neumann, Media Bureau

Kris Monteith, Consumer and Governmental Affairs Bureau

Gregory Hlibok, Consumer and Governmental Affairs Bureau

Karen Peltz Strauss, Consumer and Governmental Affairs Bureau

Eliot Greenwald, Consumer and Governmental Affairs Bureau

Rosaline Crawford, Consumer and Governmental Affairs Bureau

APPENDIX

1 – Sampled Programming

2 – Glossary

3 – Observations